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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE PHILIP S. GUTIERREZ, U.S. DISTRICT JUDGE

COTTAGE HEALTH SYSTEM, ET AL.,)
)
PLAINTIFFS,) CASE NO.
) CV 15-2198
VS.)
)
ADMIRAL INSURANCE COMPANY, ET AL.,)
)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF
PRETRIAL CONFERENCE
MONDAY, MARCH 28, 2016
2:27 P.M.
LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 28, 2016

2 2:27 P.M.

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5 THE CLERK: Calling Item No. 11 on the Court's
6 calendar, CV 15-2198, Cottage Health System, et al., versus
7 Admiral Insurance Company, et al.

8 Counsel, please state your appearances for the record.

9 MR. EDSON: Good afternoon, Your Honor. Eldon Edson
10 for Defendant and Counter-claimant Admiral Insurance Company.

11 MS. RAMOS: And Laura Ramos for Defendant Admiral
12 Insurance Company.

13 MR. GRAHAM: Drew Graham for Defendant Admiral
14 Insurance Company.

15 MR. OSHINSKY: Good afternoon, Your Honor.
16 Jerold Oshinsky for the Plaintiff Santa Barbara Cottage
17 Hospital and the Cottage Health System.

18 MS. KORNFELD: Linda Kornfeld on behalf of Cottage
19 as well.

20 MS. JACKSON: Kirsten Jackson on behalf of Cottage.

21 THE COURT: Could I first address plaintiffs'
22 counsel at the lectern, please? Whoever -- I've looked through
23 the docket, and I don't think I've missed it, but did the
24 parties submit a pretrial conference order?

25 MS. KORNFELD: Yes, Your Honor.

1 THE COURT: When was it -- what's the docket number?

2 MS. JACKSON: Let's see.

3 MS. KORNFELD: It was submitted on Monday last week.

4 MS. JACKSON: Yes.

5 THE COURT: What's the docket number?

6 MS. KORNFELD: One second, Your Honor.

7 MS. JACKSON: I have it right here. It was -- I
8 believe it was lodged with the Court --

9 THE COURT: Please stand.

10 MR. OSHINSKY: He's looking for the docket number.

11 THE COURT: What is the docket number though?

12 MS. JACKSON: There is -- it is missing a docket
13 number.

14 THE COURT: Okay. The first thing -- let's go back
15 to the lectern for a series of questions.

16 Okay. The first thing I wanted to look at is the pretrial
17 conference order, and I saw it. There's a trial estimate from
18 the plaintiffs of three to five days, and then there's a trial
19 estimate from the defense for seven days; is that correct?

20 MS. KORNFELD: Yes, Your Honor.

21 THE COURT: So I was having difficulty evaluating
22 the length of trial because of the manner in which the joint
23 witness list was prepared.

24 MS. KORNFELD: Yes, Your Honor.

25 THE COURT: And broken down into plaintiffs' -- I

1 believe plaintiffs' witnesses and then defense witnesses. But
2 with regard to the plaintiffs' witnesses identified, there's
3 not any explanation as to what they are going to testify about.
4 So I don't -- can't make a determination whether it's
5 duplicative or not. Is there any reason why that wasn't done?

6 MS. KORNFELD: Your Honor, on the witness list that
7 we submitted as to our witnesses, we've identified in bullet
8 points the categories about which they are going to testify.

9 In light of the Court's ruling, it's our expectation that
10 our case in chief is actually fairly short. And when I speak
11 of the Court's ruling, I mean the Court's ruling on summary
12 judgment.

13 THE COURT: Right.

14 MS. KORNFELD: For purposes of our case in chief,
15 there's the question of whether defense fees are covered, and
16 we believe that the Court's ruling in light of California law
17 has resolved that issue having determined that the defense view
18 language is susceptible -- reasonably susceptible to our
19 interpretation. We think to the extent that the Court --

20 THE COURT: I don't think my order says that.

21 MS. KORNFELD: The order --

22 THE COURT: I think I said there's triable issues of
23 fact, but I didn't say -- in fact, I think the position of the
24 plaintiffs is weak as it relates to recovery of attorneys'
25 fees. I don't think -- my order wasn't intended -- maybe I

1 need to rewrite it. But my order wasn't intended to simply
2 mean the plaintiff prevailed on attorneys' fees in the
3 underlying action. In fact, I think the position is quite
4 weak.

5 MS. KORNFELD: Your Honor, in the order -- and I can
6 get the order and quote from it.

7 THE COURT: Right. The parties never argued -- one
8 of the interesting things about it, the parties never argued in
9 their briefing papers that ambiguities are construed in favor
10 of the insured. I understand that's the law in California.
11 But it wasn't my intention in that ruling to make a
12 determination that the plaintiffs were, in fact, entitled to
13 attorneys' fees. In fact, if I was making the call on a court
14 trial, I would say you were not.

15 MS. KORNFELD: Your Honor, the order on page 19,
16 Your Honor does state that, "The Court believes the defendants'
17 reading of the 2007/'08 policy is more natural. It also finds,
18 however, that the policy is reasonably susceptible to the
19 plaintiffs" --

20 THE COURT: But you never argued in your papers the
21 California law that you are now relying on. You never
22 said that -- is that what you're saying basically? An
23 ambiguity should be construed in favor of the insured.

24 MS. KORNFELD: Yes, Your Honor, in light of the
25 language that we are addressing --

1 THE COURT: Did you mention that in your brief?

2 MS. KORNFELD: We opposed the motion for summary
3 judgment. We did not move affirmatively, Your Honor. But in
4 light of the Court's ruling --

5 THE COURT: Don't -- well, then I need to reconsider
6 the ruling because don't consider the ruling as an award of
7 attorneys' fees for the plaintiff. That was not my intent. I
8 need to rewrite it if you believe California law mandates that.
9 But it was simply denial of the summary judgment motion.

10 My personal view is that the policy -- defendants'
11 position as it relates to attorneys' fees is the right
12 position. But so -- you didn't move for summary judgment on
13 it. And that wasn't my intent to claim that you would win on
14 attorneys' fees. Maybe I need to reword it or reconsider the
15 order so it's not ambiguous. But certainly --

16 MS. KORNFELD: Your Honor -- I'm sorry.

17 THE COURT: But certainly my view is that the
18 plaintiffs' position on recovery of attorneys' fees is quite
19 weak.

20 MS. KORNFELD: Your Honor, under California law --

21 THE WITNESS: I understand that. You didn't argue
22 it. You didn't bring a cross-motion for summary judgment.

23 MS. KORNFELD: Yes, Your Honor, that's correct.

24 THE COURT: I was concerned the way the order was
25 written when it was sent out, but there was not a cross-motion

1 for summary judgment. So don't interpret my ruling as a
2 granting of a summary judgment that was never brought.

3 MS. KORNFELD: Correct, Your Honor. And we are
4 not interpreting your ruling in that regard. We understand
5 your ruling to be stating that there are two different
6 interpretations being presented to the Court with respect to
7 the language in the policy and that you have ruled that our --
8 our interpretation, the language is at least reasonably
9 susceptible to that interpretation.

10 As a result, the language is ambiguous, and therefore, you
11 have ruled that we may then turn to extrinsic evidence to
12 determine --

13 THE COURT: Right.

14 MS. KORNFELD: -- objectively reasonable
15 expectations of the parties, and that issue was sent to the
16 jury to ascertain with respect to that evidence what it means
17 and whether our interpretation is reasonable.

18 THE COURT: Right. It was my view that the
19 extrinsic evidence was quite weak. But that's just my view.
20 Let the jury decide.

21 MS. KORNFELD: Yes, Your Honor.

22 THE COURT: But -- so anyway, but in light of that,
23 I was confused about the witness list because the blocks of
24 just five hours, five hours, ten hours, ten hours, and I
25 thought we are going to try this case for weeks. But that's

1 not your view?

2 MS. KORNFELD: No, Your Honor. Having received your
3 ruling on summary judgment and focusing the issues with respect
4 to what the jury will be addressing --

5 THE COURT: Right.

6 MS. KORNFELD: -- we believe that the number of
7 witnesses that will be necessary and the amount of time that
8 will be necessary will be shorter than what is estimated on our
9 witness list.

10 But I just want to clarify, with respect to each of the
11 witnesses, we did identify the categories about which they will
12 be testifying. The case addresses defense fee coverage, and it
13 addresses coverage for the settlements. And we've identified
14 with respect to these witnesses which topic they'll be
15 addressing.

16 THE COURT: At this point in time, how long do you
17 think your direct case will be exclusive of cross?

18 MS. KORNFELD: Three days, Your Honor.

19 THE COURT: That's then probably five or six days if
20 you are saying three to five --

21 MS. KORNFELD: Yes, Your Honor, two to three days
22 for our case in chief.

23 THE COURT: How long did the parties spend with
24 regard to the preparation of the exhibit list? Because it
25 doesn't seem -- I mean, the list is long, but everything is

1 objected to. So I'm wondering why is everything objected to,
2 most everything it seems like. It doesn't seem like the
3 parties -- did the parties meet and confer about admissibility,
4 or was it just a list to preserve purported objections?

5 MS. KORNFELD: Your Honor, the parties did talk
6 through the exhibits. We plan to continue to talk through the
7 exhibits.

8 The rulings on the summary judgment motion and the motions
9 in limine will further assist the parties in narrowing concerns
10 about the exhibits or which exhibits, in fact, are relevant.
11 And we are willing to spend whatever time is necessary to
12 continue to work through the list in light of the recent ruling
13 last week and the forthcoming motions in limine rulings.

14 THE COURT: There was also -- there's a couple
15 statements -- both sides did it -- basically we reserve our
16 right to add or remove witnesses. But trust me, if the witness
17 isn't on the final witness list, that witness doesn't exist.
18 There's no rights reserved unless it's impeachment.

19 There's also a statement here about additional depositions
20 that are scheduled to be taken in this matter. What's the
21 status of that?

22 MS. KORNFELD: Your Honor, the expert -- there are
23 two experts, both on the question of bad faith. And those
24 expert depositions happened last week. There is about an hour
25 and a half, I believe, remaining on the deposition of our

1 expert.

2 THE COURT: Why is -- I thought I ordered that
3 expert discovery be done March 1st. Why are the parties still
4 conducting depositions?

5 MS. KORNFELD: The parties agreed to address -- in
6 light of the schedule and the other filings in the case, the
7 parties agreed to address the expert witness depositions --

8 THE COURT: You just ignored my order just because
9 the parties could agree to ignore my order?

10 MS. KORNFELD: No, Your Honor. We probably should
11 have submitted that to you.

12 THE COURT: That's right. And let me tell you this.
13 Discovery is over. No more discovery. I don't care if the
14 parties have agreed. There is no more depositions in this case
15 because it creates problems for trial preparation because depositions
16 should have been done March 1st. So despite that you've
17 agreed, if I find out there's discovery going on after a
18 discovery order, someone is going to get sanctioned. So
19 discovery is over.

20 MS. KORNFELD: Okay.

21 THE COURT: If you are trying the case today, in
22 terms of your assessment of -- let's just talk about damages.
23 What's your assessment of damages in this case if you were
24 trying the case today, and how would you break that down?

25 MS. KORNFELD: Defense fees, Your Honor. There are

1 buckets. It's the defense fees, it's the settlements, and then
2 it would be any award with respect to our bad faith claim.

3 THE COURT: Okay. So that -- okay. So what are
4 the -- I wanted to talk about specific numbers from the
5 plaintiffs' position. What was the position with regard to
6 attorneys' fees damages?

7 MS. KORNFELD: With respect to the underlying
8 matter, Your Honor?

9 THE COURT: Yes.

10 MS. KORNFELD: It's about 3.77 million.

11 THE COURT: Okay. And then the settlement? I
12 should know this. A million?

13 MS. KORNFELD: Your Honor, it's 1.2 -- there are two
14 settlements.

15 THE COURT: Right.

16 MS. KORNFELD: A \$950,000 settlement in 2012 and a
17 settlement after trial in 2014. The settlement after trial was
18 1.5 million. And it's our position that the -- in light of the
19 applicable policy retention, we are entitled to the 1.5 plus
20 40. So 1.54.

21 THE COURT: Okay. And if you argue today, what
22 would you argue in terms of bad faith?

23 MS. KORNFELD: I'm sorry, Your Honor?

24 THE COURT: What would you argue as towards bad
25 faith and punitive? What would your position be today?

1 MS. KORNFELD: Your Honor, with respect to bad
2 faith, it's the attorneys' fees that we've incurred as coverage
3 counsel.

4 THE COURT: Would that be my motion afterwards under
5 *Brandt*?

6 MS. KORNFELD: That's part of the case in chief.
7 That gets decided by the jury in the case in chief. It's not
8 bifurcated. And it's about \$800,000, I believe. And is that
9 accurate?

10 MS. JACKSON: I --

11 MS. KORNFELD: The last month has been very busy,
12 and we don't have that bill yet.

13 THE COURT: Okay.

14 MS. KORNFELD: But then with respect to punitive
15 damages, that is a second phase for the jury.

16 THE COURT: What are your thoughts about that today?

17 MS. KORNFELD: Your Honor, the multiplier in
18 California has been modified over the years. I'd say probably
19 a four-to-one multiplier is something that we would argue would
20 be appropriate and supported.

21 THE COURT: Have there been -- again, not disclosing
22 what's been discussed in the settlement discussions, has there
23 been settlement discussions?

24 MS. KORNFELD: Your Honor, the parties met before
25 private mediator John Bates about six weeks ago. At the

1 mediation it was determined that because of the issues that
2 were being addressed by motion for summary judgment at that
3 point and the reply brief had not yet been filed and obviously
4 the Court had not yet ruled, the parties decided that -- or the
5 mediator decided that it would be more productive for the
6 parties to come back and have --

7 THE COURT: The mediator decided?

8 MS. KORNFELD: The mediator suggested to the parties
9 that it may be more productive for the parties to come back and
10 have a discussion after the Court ruled on the summary judgment
11 motion. We had had outreach from the Court ADR judge with
12 respect to what the parties would be willing to do or
13 interested in doing with respect to a court-appointed mediator
14 or private mediator.

15 And since the Court ruled on the summary judgment motions,
16 we've had some dialog amongst the parties as to whether we
17 should consider returning to John Bates, who was the mediator
18 we appeared before a few weeks ago, to try to resolve the case.

19 There was some suggestion that we may try to find someone
20 who would be stronger and able to more effectively move the
21 parties to where we need to be to settle. And there was a
22 discussion -- a suggestion by Admiral of another individual.
23 We agreed that that individual would be someone that we'd be
24 willing to mediate in front of.

25 THE COURT: Who was that?

1 MR. EDSON: Robert Kaplan, Your Honor. We have
2 inquired, and unfortunately Mr. Kaplan is not available for the
3 next three months.

4 MS. KORNFELD: So that became an issue, Your Honor.
5 But we --

6 THE COURT: I mean, I think he'd be perfect for this
7 case actually.

8 MR. EDSON: He's terrific.

9 THE COURT: He's terrific.

10 MS. KORNFELD: Maybe a phone call from the judge.

11 THE COURT: I don't know. He's busy. I mean, he
12 would be almost perfect for this case. I'm thinking of the
13 same person. San Diego-based though?

14 MR. EDSON: Yes, Your Honor. He's also an insured's
15 counsel like Mr. Oshinsky here. In fact, I think he was the
16 policyholder attorney who brought us the *Brandt* fee case.
17 We've mediated numerous cases in front of him, and he does a
18 great job with difficult cases.

19 MR. OSHINSKY: We'd be very happy with him,
20 Your Honor.

21 THE COURT: It would be great. I mean, in a prior
22 life, I was associated counsel with him on a couple of cases.
23 That's over 20 years ago. But he would be perfect. Okay. But
24 he's not --

25 MR. EDSON: We inquired, I think it was on Friday --

1 am I thinking right -- and I was told by my secretary that he
2 was booked for three months.

3 MR. OSHINSKY: Even if he could give us a few hours
4 to talk on the phone, that would be a start. I don't know. We
5 are happy to try him.

6 MR. EDSON: I don't think -- if I may speak,
7 Your Honor.

8 THE COURT: Yes.

9 MR. EDSON: My sense, given the complexity of the
10 issues, this isn't a few hours on the telephone. This is a
11 significant mediation session.

12 THE COURT: I agree with you. But it really helps
13 with someone like Rob Kaplan's experience as it relates to
14 insurance litigation and policy language and what cases are --
15 how cases are valued. That's why I think you are probably
16 right, more than just a few hours of phone calls, but it's
17 surely going to save quite a bit of time -- he's going to read
18 the summary judgment motion and your briefs, and he's going to
19 know exactly where this case -- he's going to know something
20 about this case that none of us know in the room. He'll bring
21 that expertise.

22 Somebody else who I thought of -- I mean, I don't know if
23 you -- he hasn't been doing mediation that long. Do either of
24 you sides know Bruce Friedman?

25 MR. EDSON: I'm sorry, Your Honor?

1 THE COURT: Bruce Friedman. Have any of you done
2 work with Bruce Friedman?

3 MS. KORNFELD: Yes, Your Honor, I know
4 Bruce Friedman.

5 MR. OSHINSKY: Yes, we do.

6 THE COURT: Defense?

7 MR. EDSON: I do not, Your Honor.

8 THE COURT: I think he has the kind of expertise --
9 Mr. Kaplan has been doing mediation longer than Mr. Friedman,
10 but he has that same kind of expertise. I mean, i think he's
11 represented insureds and insurance companies in a prior life.

12 MS. KORNFELD: He's been in the business for a long
13 time. And so while he hasn't been a mediator as long, he
14 certainly, I believe, would grasp the issues.

15 THE COURT: I kind of like him since he was a
16 managing partner when I was hired as an associate. But I
17 should disclose that. So -- but that was 30 years ago so --

18 MR. OSHINSKY: Can you bring him in?

19 THE COURT: I see him at ABTL events and things like
20 that. That's how I know he's now mediating. But it just -- I
21 think it's a case that should be settled. I think there's
22 strengths and weaknesses. I've started -- I can work on both
23 sides easily well. I mean, I think there's problem with the
24 defense fees. I think there's issues to be talked about in
25 terms of allocation as it relates to how the case was settled.

1 MS. KORNFELD: Yes, Your Honor.

2 THE COURT: You know, both of you, both sides know
3 these issues. I would say this. As a multiplier, different
4 than state court. I don't -- you might argue for four-to-one,
5 but I don't think a federal jury is going to give you -- is
6 going to -- it just depends who you get in the box; right? You
7 only have three peremptories a side. So you just don't know.

8 But I'm not sure they are going to get that excited about
9 the case to award a punitive damages multiplier. I don't think
10 that's necessarily news in terms of how federal juries go.

11 So I think there's -- Mr. Kaplan or whoever are going to
12 say these things and they're going to say bad things to the
13 defense as well, because there is stuff to be -- I mean, we
14 highlighted some of it. You know, the parties were in fierce
15 communication throughout the litigation. But then you have
16 correspondence that says no more correspondence would be
17 helpful. So everybody has things to talk about. You know
18 that.

19 MS. KORNFELD: Your Honor, I should say that we
20 have -- the parties do work well together, and I think we
21 understand the issues on both sides.

22 THE COURT: Yeah.

23 MS. KORNFELD: We just need someone who will be
24 effective in --

25 THE COURT: Maybe talking to the clients.

1 MS. KORNFELD: -- clients as well and making sure
2 the clients understand the issues and there's a fulsome dialog
3 about the strengths and weaknesses on both sides. So a strong
4 mediator will be important.

5 THE COURT: What do you think -- it won't hurt my
6 feelings. What do you think about the case -- I mean, I'll let
7 the defense do their due diligence about Bruce Friedman as a
8 potential mediator in this case.

9 MS. KORNFELD: Your Honor, my view is that, if the
10 other side is comfortable with a mediator, then I'm comfortable
11 with a mediator. I am comfortable with Bruce Friedman, and
12 if --

13 THE COURT: Both sides have to be. I think
14 everybody -- both sides jumped on Mr. Kaplan for good cause.
15 So both sides have to jump on board with Mr. Friedman.

16 How much time would you need -- I don't think even a phone
17 call from me I'm going to get him, unless he has a cancelation
18 that we don't know about.

19 MR. EDSON: Your Honor, obviously if the Court is
20 encouraging us to speak with Mr. Friedman, mediate with
21 Mr. Friedman, we would only need a day or two to do a due
22 diligence. The question is, as with a lot of good mediators,
23 his schedule and availability, whether he'd be booked up, and
24 we just don't know that, I think, at this point.

25 THE COURT: Let me -- then I want the parties to

1 work -- submit a few other things that are a little different.

2 Here's my problem. I'm starting trial tomorrow for two
3 weeks. Then I'm gone for a week. And then I've got two civil
4 cases trailing, one on the 29th, and this would be the second
5 case that's trailing. So realistically I can't try this case
6 until May 17th or May 24th. So that gives you some time to
7 stop the presses and to talk to each other some more with the
8 clients.

9 Did you get any indication -- I mean, did you get any
10 sense from Mr. Kaplan's office that he is solid booked for
11 three months or if he had some openings that if he got a call
12 from somebody, he might take it on?

13 MR. EDSON: Your Honor, unfortunately I did not
14 speak with their office. I mean, I get along very well with
15 Mr. Kaplan, and I'm happy to call him myself to see if he could
16 possibly work us in. Through my secretary, I heard he's booked
17 for three months. He sometimes will have a cancelation and can
18 put people in.

19 I also know in the past he's done this sort of informal
20 mediation thing where he works the phones and -- as I said, I
21 don't know if this is the right case for that. But maybe we
22 could --

23 THE COURT: I think it depends where your clients
24 are at probably, doesn't it? I mean, it's probably -- I
25 suspect that you're -- without telling each other where you are

1 at, you probably are pretty close but your clients aren't maybe
2 there yet, ready, either side. That's my guess. Because both
3 sides have a lot of experience. So I think you both understand
4 your case and what the value is. And maybe either side the
5 clients need to be persuaded in one way or another.

6 MS. KORNFELD: I have been in mediation five times
7 already this year, and they've all settled at midnight. So my
8 experience is that unless you are all in the room and you are
9 there for a long time, nothing much happens. So I would think
10 a full day session in person would be necessary to accomplish a
11 settlement goal here.

12 THE COURT: I can't disagree. Can you try -- let's
13 take a short break. Can you try calling Mr. Kaplan's office to
14 see if there's something available? And if it would help, I'd
15 be happy to talk to him.

16 MR. EDSON: Okay. I certainly will, Your Honor.

17 THE COURT: Let's break for a few minutes.

18 MS. KORNFELD: Thank you, Your Honor.

19 MR. EDSON: Thank you, Your Honor.

20 (A brief recess was taken.)

21 THE CLERK: Recalling Cottage Health Systems,
22 et al., versus Admiral Insurance Company.

23 Counsel, please restate your appearances for the record.

24 MR. OSHINSKY: Jerold Oshinsky, Your Honor, for the
25 plaintiffs.

1 MS. KORNFELD: Linda Kornfeld on behalf of Cottage.

2 MR. EDSON: Eldon Edson on behalf of the Admiral
3 Insurance Company.

4 MS. RAMOS: Laura Ramos on behalf of Admiral
5 Insurance Company.

6 MR. GRAHAM: Drew Graham for Admiral.

7 THE COURT: And do you have a report?

8 MR. EDSON: Yes, Your Honor. I spoke with
9 Rob Kaplan's office, and it's their expectation that they are
10 going to have an opening on April 13th. They will know at the
11 end of today if that's open. But his assistant believes that
12 it will be open.

13 And so assuming that it works with the parties, you know,
14 we'd like to go see Rob, I think. I think that would be a good
15 way to go.

16 THE COURT: Okay. Do you have a backup plan if he
17 doesn't cancel? Do you have a backup plan if Mr. Kaplan can't
18 do it?

19 MR. EDSON: We don't at this point, but we will. If
20 he can't do it, we'll all agree on someone else, and we'll go
21 see someone before the trial date, whenever it is, in May.

22 THE COURT: Okay. So let's continue the trial date
23 to May 24th at 9:00 o'clock. Pretrial conference May 9th,
24 2016.

25 I'd like to see the exhibit list and the witness list

1 amended to reflect the current conditions and consistent with
2 whatever I decide, whether it's a seven-day case, a three-day
3 case, a four-day case, just more in line with that so I have a
4 better understanding of what's repetitious or not. And if the
5 parties would work more closely, not necessarily with the
6 mindset of preserving objections but pointing out to the Court
7 where the serious disagreements are.

8 All right. Thank you.

9 MR. OSHINSKY: Your Honor, could I say one thing for
10 the record? So it not be thought otherwise, we like
11 John Bates, and we thought he was a fine gentleman, perhaps not
12 for this case, but we would certainly consider him in the
13 future. We thought he was a very fine gentleman.

14 THE COURT: I just thought -- what we said earlier,
15 I think it's a niche case, and I think you need somebody who
16 understands, will read the papers, the parties' position, the
17 Court's order and kind of figure out everybody's strengths and
18 everybody's problems and could be -- and who would have
19 credibility in assessing that and talking through the case with
20 the parties. But, yeah, I just think Mr. Kaplan would be
21 perfect for this case as mentioned.

22 MR. OSHINSKY: As Ms. Kornfeld said, we like any
23 mediator they like.

24 THE COURT: Okay.

25 MR. EDSON: Your Honor, there is one other thing

1 with regard to pretrial deadlines. I just -- even with the
2 continuance of the trial date, I'd just like to confirm my
3 assumption, that, for example, the motion in limine replies
4 will still be due this Friday. We are not kicking everything
5 down the road. Is that correct, or am I incorrect?

6 THE COURT: Well, I mean, what's going to help the
7 parties talk more on the 13th? Tell me.

8 MR. EDSON: To be honest, I think we should get all
9 of the -- I think we should --

10 THE COURT: Just finish the work and get ready --

11 MR. EDSON: Let's finish the work, see what everyone
12 has to say, and then we can move forward with this next step.

13 THE COURT: Okay.

14 MS. KORNFELD: Your Honor, if I can just chime in on
15 that. I agree that filing our motions in limine reply --
16 motions in limine reply this Friday would be helpful. We also
17 have dates, deadlines with respect to exchange of graphics and
18 things like that. I would suggest that we put those types of
19 deadlines off so that the parties aren't spending time
20 preparing for trial when we should be focused on mediating.

21 THE COURT: The motion in limine is due Friday, and
22 then everything else is delayed based on the new trial date.

23 MR. EDSON: That's agreeable. Thank you,
24 Your Honor.

25 MS. KORNFELD: Thank you, Your Honor.

1 THE CLERK: What's the time for the pretrial
2 conference?

3 THE COURT: 2:30.

4 THE CLERK: Thank you.

5 MR. EDSON: Thank you, Your Honor.

6 MS. KORNFELD: Thank you, Your Honor.

7 (At 3:34 p.m. the proceedings adjourned.)
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CERTIFICATE OF OFFICIAL REPORTER

I, MAREA WOOLRICH, FEDERAL OFFICIAL REALTIME COURT
REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING
IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT
THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 31ST DAY OF MARCH, 2016.

/S/ MAREA WOOLRICH

MAREA WOOLRICH, CSR NO. 12698, CRR
FEDERAL OFFICIAL COURT REPORTER